IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 30673 of 2006(B)

PETITIONER:

JACOB KURIAN, S/O.LATE P.M.KURIAN,
AGED 44, RESIDING AT PANAMPALLIL HOUSE,
POOVATHUR P.O., THIRUVALLA,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE VILLAGE OFFICER,
KOIPURAM VILLAGE OFFICE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT.

3. M/S. IDEA MOBILE COMMUNICATIONS LIMITED
MERCY ESTATE, RAVIPURAM, ERNAKULAM,
REPRESENTED BY ITS SENIOR LEGAL MANAGER.

BY ADV. SRI.DEEPU THANKAN
G.P. SMT.N.SUDHA DEVI
ADV.COMMISSIONER SRI.GEORGE MECHERIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON 27/11/2006 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 POSSESSION CERTIFICATE ISSUED BY R2.

P2 LAND TAX RECEIPT ISSUED BY THE VILLAGE OFFICER ON 26.10.06.

P3 AGREEMENT ENTERED INTO BETWEEN PETITIONER AND R3.

P4 RECEIPT DT 31.10.06.

P5 NOC IN FAVOUR OF R3.

P6 PROHIBITIONORDER DT 18.11.06.

TRUE COPY

P.A. TO JUDGE

C.N. RAMACHANDRAN NAIR, J.

W.P. (C) No. 30673 OF 2006 B

Dated this the 27th day of November, 2006

J U D G M E N T

Writ petition is filed challenging Ext.P6 order issued by the 2nd respondent prohibiting 3rd respondent from constructing and commissioning the mobile communication tower in petitioner's property. According to the petitioner, building was given on lease for construction of mobile tower on roof top to the 3rd respondent, who has constructed the same. When the case came up for hearing on 23.11.06, Government Pleader reported that there is trespass by petitioner into puramboke property and, therefore, the tower constructed on the building which is partly constructed in puramboke land should not be allowed to be commissioned. In order to clarify the position, this court sent an Advocate Commissioner, who has filed report today. The Commissioner has also personally explained that from the sketch prepared by the Taluk Surveyor and produced by him, it is seen that there is trespass by petitioner in an extent of 8 sq.mt. However, it is reported that the building is not constructed in the trespassed area but the protection wall is constructed encroaching into puramboke land. If puramboke is trespassed, then the Revenue authorities are free to dispose the petitioner and demolish the same. However, since the demolishion would cause threat to the stability of the building and the structure on the same, I direct the District Collector to fix the annual rent for the trespassed area and collect it from the petitioner. So far

as report by 2nd respondent about danger to public life in installing the communication tower, the issue is covered in favour of the 3rd respondent by decision of this court reported in ***Reliance Infocomm Ltd. Vs. Chemmanacherry Grama*** Panchayat [2006 (4) ILR 357].

In the circumstances, writ petition is disposed of permitting the 3rd respondent to activate the mobile communication tower and use the same subject to petitioner remitting rent for the trespassed area to be fixed by the District Collector. The District Collector is directed to fix the rent, after hearing the petitioner, within a period of three weeks from the date of production of a copy of this judgment. The 2nd respondent will be free to stop the operations if rent is not paid in terms of the District Collector's order. Ext.P6 will stand stayed for one month and, thereafter 2nd respondent will recall it if petitioner starts remitting the rent fixed by the District Collector.

(C.N. RAMACHANDRAN NAIR, JUDGE)

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